UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

WARREN UNILUBE, INC.,

Employer,

and **Case 26-RC-8616**

TEAMSTERS LOCAL 667,

Petitioner

EMPLOYER WARREN UNILUBE, INC.'S BRIEF IN SUPPORT OF EXCEPTIONS TO REPORT ON OBJECTIONS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

NLRB CASEHANDLING MANUAL

EMPLOYER WARREN UNILUBE, INC.'S BRIEF IN SUPPORT OF EXCEPTIONS TO REPORT ON OBJECTIONS

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, Warren Unilube, Inc. ("Warren Unilube") respectfully files this Brief in Support of Exceptions to Report on Objections. Warren Unilube respectfully submits that its Exceptions and the evidence submitted therewith establish that the Board should reject the Regional Director's recommendations in his Report on Objections (the "Report"), sustain Warren Unilube's objections to the election, set aside the election conducted on November 5, 2010, and direct a new, rerun election. In the alternative, at a minimum, Warren Unilube requests that the Board determine that substantial and material factual issues exist and direct that a hearing be held before a hearing officer in accordance with Section 102.69(f) of the Board's Rules and Regulations.

STATEMENT OF FACTS

Upon a petition filed by the International Brotherhood of Teamsters Local 667 (the "Union"), and pursuant to a Stipulated Election Agreement, an election by secret ballot was scheduled for October 8, 2010 at Warren Unilube's facility in West Memphis, Arkansas. (See Report at 1.)

On October 6, 2010, an editorial appeared in the Crittenden County Times, the local newspaper (the "Editorial"). The Editorial, titled, "Our View: Union very bad idea for West Memphis," generally expressed the newspaper editor's views that unions are no longer necessary or relevant. (A-34.)[1] The Editorial also referenced "efforts by Teamsters Local 667, Memphis, Tenn. of trying to take control of a major company right here in West Memphis." (A-34.) Relevant to this action, in the Editorial, the editor also stated, "'[f]rom all we know, if this union

[1] Documents appended to Employer Warren Unilube, Inc.'s Exceptions to Report on Objections pursuant to Section 102.69(g)(3) of the Board's Rules and Regulations are cited herein as "(A-[page number].)"

succeeds this company's management could very easily close up and cause every worker to loose [sic] their jobs." (A-34.)

Prior to the newspaper's publishing of the Editorial, Warren Unilube's President, Plant Manager, managers and supervisors (i.e., anyone authorized to act or speak on behalf of Warren Unilube) did not speak with anyone with the Crittenden County Times regarding any of the statements made in the Editorial, and none asked anyone to speak on their behalf with anyone with the Crittenden County Times regarding any of the statements made in the Editorial. (A-35 to A-78.) Indeed, no Warren Unilube President, Plant Manager, manager or supervisor was even aware that the Crittenden County Times intended to publish any information or commentary regarding the election prior to publication of the Editorial. (A-35 to A-78.)

On October 7, 2010, immediately upon learning that the Editorial had been published in the newspaper, Dale Wells, then the President of Warren Unilube, prepared a memorandum specifically disavowing and disputing the statements made by the newspaper editor in the Editorial (the "Memorandum"). (A-79.) Specifically, Mr. Wells stated (in part):

> I understand that yesterday an editorial was included in the Opinion section of the Crittenden County Times, expressing the Newspaper's views on unions and about the upcoming election. The article raised the question of whether this plant would close in the event that Warren Unilube employees at this facility vote for the union on Friday. In response, WE CAN SAY THIS . . . **please disregard ALL rumors**. The future of this plant will be decided by the officers and directors of the company and **only the statements issued by officers of this company as to the future of this plant can be regarded as reliable and authentic**. Additionally, we want all of you to know that **Warren Unilube has no intent to close this plant no matter the outcome of this election.** We've said it before and we'll say it again: *you owe it to yourself and to your family to base your vote on the facts, not on rumors or speculation.*

(A-79 (emphasis added).) The Memorandum was distributed to all employees at Warren Unilube's West Memphis facility that were eligible to vote in the upcoming election, and no Warren Unilube President, Plant Manager, manager or supervisor had any discussion with any

potential bargaining unit member regarding the Editorial in which he or she indicated anything contrary to the Memorandum distributed by Mr. Wells. (A-28 to A-78.)

Despite the fact that there was absolutely no basis for believing or alleging that Warren Unilube was responsible for the Editorial, and despite the fact that Warren Unilube immediately issued the Memorandum unequivocally disavowing any statements made in the Editorial, the Union nonetheless filed an unfair labor practice charge against Warren Unilube on the eve of the election and, according to the Regional Director's Report on Objections (the "Report"), refused to file a "request to proceed" to allow the election to proceed notwithstanding the pendency of the unfair labor practice charge. (See Report at 1.) The Union's charge alleged that "[s]ince on or about October 6, 2010, the Employer, by its officers, agents, and representatives, has threatened and coerced its employees, in violation of Section 7 of the Act, by threatening to close the facility if the union is voted in." (A-4.) The Regional Director, in turn, immediately postponed the election, apparently without consideration of any of the factors required to be considered before taking the drastic step of postponing a scheduled election and apparently without consideration of any less drastic alternatives.

That the Union filed the unfair labor practice charge for no purpose but to unfairly delay the election to its advantage is perhaps best evidenced by the fact that, on October 20, 2010, some 13 days after the election was postponed, but ***before the Region had even requested evidence from Warren Unilube in response to the charge***, the Union requested that the election proceed. (See Report at 1-2; A-5 to A-7.) The Regional Director ultimately dismissed the charge on December 30, 2010, concluding that "further proceedings are not warranted because there is insufficient evidence to establish a violation of the Act." (A-8 to A-10.)

In the meantime, the election proceeded on November 5, 2010. (Report at 2.) The results of the election, as disclosed by the tally of ballots served on the parties at the conclusion of the election, were as follows:

Approximate number of eligible voters	135
Number of void ballots	0
Number of votes case for Petitioner	69
Number of votes case against participating labor organization	56
Number of valid votes counted	125
Number of challenged ballots	5
Number of valid votes counted plus challenged ballots	130

(See Report at 2.)

On November 12, 2010, Warren Unilube timely filed Employer's Objections to Conduct Affecting Results of Election (the "Objections"), raising objections numbered one through four, to conduct affecting the results of the election. (A-24 to A-27.) While Warren Unilube raised several objections to conduct affecting the election, Warren Unilube has elected to focus these Exceptions on only its first objection – that the improper and unjustified delay in the originally-scheduled election unfairly impacted the results of the election and destroyed the laboratory conditions necessary for a valid election. Because the actions of the Union and the Region had the tendency to interfere with the employees' freedom of choice, Warren Unilube submits that it objection should be sustained, the election results set aside, and a new election directed.

ANALYSIS

Warren Unilube's objection regarding the delay in the election has two facets, both of which interfered with the employees' free choice in the election, and either of which justifies sustaining Warren Unilube's objection and setting aside the election. First, the Union's filing of an utterly baseless unfair labor practice charge for the sole purpose of delaying the election interfered with the employees' free choice in the delayed election. Second, the Regional Director's baseless decision to postpone the election despite the fact that there was not a single

piece of evidence to support the Union's charge gave the impression to the employees that there was merit to the Union's charge and unfairly delayed the election, also interfering the employees' free choice in the subsequent election.

In recommending that Warren Unilube's Objection regarding the delay in the election be overruled, the Regional Director (1) ignored the impact of critical facts; (2) applied the wrong standard in determining whether Warren Unilube met its burden with regard to its objections; and (3) mis-stated and thereby revealed that the Regional Director failed to apply the current guidelines regarding the Board's blocking charge policy. For any or all of these reasons, Warren Unilube respectfully requests that the Board reject the Regional Director's recommendation to overrule Warren Unilube's objection.

A. BY FILING WHAT THE UNION KNEW TO BE A BASELESS UNFAIR LABOR PRACTICE CHARGE SOLELY FOR THE PURPOSE OF DELAYING THE ELECTION, THE UNION INTERFERED WITH THE EMPLOYEES' FREEDOM OF CHOICE.

There can be no question that the Union's unfair labor practice charge was utterly baseless, or that the Union filed its baseless charge solely for the purpose of delaying the election. Further, there can be no question that the Union's conduct impacted the results of the election, destroyed the laboratory conditions necessary for a valid election, and interfered with the employees' free choice in the election.

1. The Regional Director Failed to Consider Facts That Establish That the Union Filed the Unfair Labor Practice Charge for the Sole (and Improper) Purpose of Delaying the Election.

In his Report, the Regional Director made the bald conclusion that, "[t]here is no basis to conclude that the charge was frivolous or baseless in these circumstances." (Report at 7.) However, in so concluding, the Regional Director ignored the significant evidence submitted by

Warren Unilube that establishes that the Union's unfair labor practice charge was utterly baseless and filed for the sole (and improper) purpose of delaying the election.

For example, the Regional Director failed to consider that, when the Union filed its charge, it had **no** evidence that Warren Unilube had any involvement whatsoever in the newspaper's decision to publish the Editorial. The Regional Director also failed to consider in his analysis of Warren Unilube's objection that, immediately after the Editorial was published, Warren Unilube issued a Memorandum to all employees specifically and unequivocally disavowing the statements made in the Editorial, such that there could be no basis for attributing those statements to Warren Unilube, and thus no basis for the unfair labor practice charge.[2] (See A-79.) The Regional Director also failed to consider in his analysis that, while the Union initially refused to allow the election to proceed on its originally scheduled October 8, 2010 date, it later filed a request to proceed on October 20, 2010 – ***despite the fact that the Region has not even requested evidence from Warren Unilube in response to the charge by that date***. (See A-5 to A-7.) The Regional Director also incorrectly stated in his Report, "[a]lthough the charge was ultimately withdrawn by the Union, there is no basis to conclude that the charge was frivolous or baseless in these circumstances." (Report at 7.) To the contrary, the Union did not withdraw the charge – it was dismissed by the Regional Director "because there is insufficient evidence to establish a violation of the Act." (A-8 to A-10.) The Regional Director thus also

[2] See, e.g., Star Kist Samoa, Inc., 237 NLRB 238, 246 (1978) (finding that an employer could be liable for the actions of an anti-union group during an election campaign only if those actions are attributable to the employer and the employer did not sufficiently disavow those actions); Richlands Textile, Inc., 220 NLRB 615, 618 (1975) (finding an employer was liable for the actions of a member of the state House of Representatives only if the member was the agent of the employer or the employer did not disavow the member's actions and thus acquiesced and ratified those actions by silence). The Regional Director did reference the Memorandum in passing in his summary of the facts relevant to Warren Unilube's objection, but he did not reference or consider the Memorandum in his analysis. (See Report at 3, 7-8.)

failed to consider the significance of this key fact in issuing the Report. Finally, the Regional Director ignored the six Declarations (including three from hourly employees) submitted by Warren Unilube in support of its objection, all of which stated that, immediately prior to the initially-scheduled October 8, 2010 election, the Union was unlikely to be voted in, thus establishing the Union's motive to file a baseless charge for the sole purpose of delaying the election. (See A-80 to A-88; A-90 to A-93.)

In short, the Regional Director's analysis regarding Warren Unilube's objection failed to consider critical facts and mis-stated others. As such, the Regional Director's analysis is unquestionably flawed and should be rejected. Warren Unilube thus respectfully requests that the Board reject the Regional Director's recommendation to overrule this objection.

2. The Regional Director Applied the Wrong Legal Standard When He Concluded That Warren Unilube Failed to Meet Its Burden in Establishing the Basis for Its Objection.

In addition to the factual omissions and inaccuracies in the Report, the Regional Director also applied the wrong legal standard in determining whether Warren Unilube satisfied its burden under this objection. The Regional Director first correctly cited the applicable standard: an "objecting party must show, *inter alia*, that the conduct in question affected employees in the voting unit. A party's conduct cannot be the basis for setting aside the election unless it **reasonably tended** to interfere with the employees' free and uncoerced choice in the election." (Report at 6 (quoting Safeway, Inc., 338 NLRB 525 (2002) and Baja's Place, 268 NLRB 868 (1984)) (emphasis added).) However, this is not the standard that the Regional Director applied. Rather, in his analysis, he states: "Regarding witness statements presented by the Employer in support of this objection, even assuming that each witness would testify similarly in a Board affidavit or at a hearing, the testimony is mere speculation as to alleged effect of postponing the election and does not constitute a basis for setting aside the election." (Report at 8.) The

Regional Director is thus essentially insisting that, for Warren Unilube to succeed on its objection, Warren Unilube must show that "Employee A" would have voted "no" before the delayed election, but then voted "yes" because of the delay. Not only would it be inappropriate for Warren Unilube to attempt to solicit such information from the employees, this is simply not the standard that Warren Unilube must satisfy.

Warren Unilube provided six witness declarations in support of this objection, including declarations from three supervisors and three hourly employees who were eligible to vote in the election. (A-80 to A-88; A-90 to A-83.) Each and every one of those six witnesses stated under penalty of perjury that the delay in the election affected the outcome of the election. Indeed, one of the hourly employees stated that he was aware of at least 20 employees who were going to vote against the Union prior to the October election, but whom he believed later decided to vote in favor of the Union by the time of the November election. (A-92 to A-93.) Another of the hourly employees stated that, based on his discussions with other employees, he did not think that the Union had enough votes to succeed in the October election, and that the Union filed the charge to delay the election because it needed more time to get more votes in its favor. (A-90 to A-91.) The other four witnesses offered similar evidence. (A-80 to A-88.)

This evidence was sufficient to demonstrate that the Union's conduct "**reasonably tended** to interfere with the employees' free and uncoerced choice in the election." See Baja's Place, 268 NLRB 868. Indeed, existing Board law establishes that an objecting party need not demonstrate to a certainty that the election results would have been different but for the opposing party's conduct. See, e.g., Kerona Plastics Extrusion Co., 196 NLRB 1120 (1972); Fresenius USA Mfg., Inc., 352 NLRB 679, 680 (2008). In Kerona, the Board stated, "**[i]t is impossible here to determine whether the aforementioned irregularity affected the outcome of the election.** However, we find that the laboratory conditions have been distributed to such a serious extent

that in the interest of maintaining our standards there appears no alternative but to set this election aside and to direct a new election." Kerona, 196 NLRB 1120 (emphasis added). The Board thus sustained the employer's objections. Similarly, in Fresenius, the Board stated, "[t]he Board will set aside an election, however, if the irregularity is sufficient to raise **'a reasonable doubt** as to the fairness and validity of the election.'" Fresenius, 352 NLRB at 680 (quoting Polymers, Inc., 174 NLRB 282 (1969), *enf'd* 414 F.2d 999 (2d Cir. 1969) (emphasis added)).

As established by the Board in Kerona and Fresenius, Warren Unilube need not establish to an absolute certainty that the election result would have been different. Indeed, to institute such a standard would encourage employers to improperly attempt to determine how employees voted in an election, which should not be condoned, much less encouraged or required. Here, it may not be possible to "determine whether the aforementioned irregularity affected the outcome of the election." However, the Board has confirmed that this is not the applicable burden. The six witness declarations (including declarations from three hourly employees), as well as the evidence submitted with Warren Unilube's position statement in response to the Union's unfair labor practice charge,[3] are – at a minimum – sufficient to "raise a reasonable doubt" that the Union engaged in the conduct alleged in Warren Unilube's objection, in that it filed the baseless unfair labor practice charge for the sole purpose of delaying the election. As such, Warren Unilube respectfully requests that its objection to the election be sustained.

3. The Board Should More Closely Scrutinize the Union's Conduct Given the Closeness of the Election Results.

To the extent that the Board deems the resolution of Warren Unilube's objection to be a close question, the Board should err in favor of sustaining the objection given the closeness of

[3] Warren Unilube provided its position statement in response to the Union's charge (including the exhibits thereto) to the Regional Director in support of its Objections. (See A-28 to A-79.)

the election results. As noted above, the final vote tally was such that seven (7) changed votes (out of the 130 votes cast) would have altered the election results. (See Report at 2.) In ruling on objections, the Board has repeatedly held that "misconduct must be more closely scrutinized where, as here, the election results were extremely close." RJR Archer, Inc., 274 NLRB 335, 336 n.13 (1985); see also NLRB v. USM Corp., 517 F.2d 971, 976 n. 5 (6th Cir. 1975) ("any minor violation of the Act cannot be dismissed summarily for it could have swayed the crucial vote"). Given the closeness of the vote here, the Union's conduct should be closely scrutinized, and any doubts should be resolved in favor of sustaining Warren Unilube's objections to ensure that the employees are permitted to vote in an election in which there is no question that they had freedom of choice.

Based on the numerous factual omissions and inaccuracies described above, as well as the Regional Director's failure to apply the proper legal standard regarding Warren Unilube's burden with respect to its objections, Warren Unilube respectfully requests that the Board refuse to follow the Regional Director's recommendation in his Report, sustain Warren Unilube's objection, and direct a rerun election.

B. BY FAILING TO ALLOW THE ELECTION TO PROCEED DESPITE THE PENDENCY OF THE UNION'S PATENTLY BASELESS UNFAIR LABOR PRACTICE CHARGE, THE REGIONAL DIRECTOR FAILED TO FOLLOW THE BOARD'S POLICIES, IMPROPERLY GAVE THE EMPLOYEES THE IMPRESSION THAT THERE WAS MERIT TO THE UNION'S CHARGE, AND INTERFERED WITH THE EMPLOYEES' FREEDOM OF CHOICE.

As described above, the Union's conduct, in filing a patently baseless unfair labor practice charge for the sole purpose of delaying the election, had the tendency to interference with the employees' freedom of choice, such that Warren Unilube's objection should be sustained. Further exacerbating the impact of the Union's conduct was the conduct of the Regional Director following the filing of the charge. Specifically, after the charge was filed, and

despite the fact that there was not one shred of evidence submitted by the Union in support of its charge, the Regional Director postponed the election. In doing so, the Regional Director not only failed to follow the Board's existing policies as set forth in the NLRB Casehandling Manual, but the Regional Director also wrongfully and falsely gave the employees the impression that there was merit to the Union's charge against Warren Unilube, thus interfering with the employees' freedom of choice.

In the Report, the Regional Director states, *inter alia*, "The Board has a longstanding policy of refusing to process petitions when there is a pending unfair labor practice case. . . . Election petitions will not be processed when the alleged unfair labor practice conduct would have a tendency to interfere with employees' free choice." (Report at 7.) The Regional Director then states, "[t]here are four major exceptions to this policy, the fourth being applicable to the instant case." (Report at 7.) The Regional Director then quotes the following language, unattributed to any source:

> *Where the charge is filed too late to permit investigation before the hearing or the election.* (secs. 11731.4 and 11731.5.) In this situation, the Regional Director has the discretion to postpone the hearing or election; conduct the hearing or election and impound the ballots; or conduct the election, issue a tally and determine the validity of the election if objections are filed.

(Report at 7.) While the sections cited within the Regional Director's quote appear to be cites to the NLRB Casehandling Manual (the "Manual"), the language "quoted" by the Regional Director is not contained anywhere within the Manual.

The Regional Director incorrectly and incompletely states the applicable provisions relevant to blocking charges. First, while the Manual does state that (as paraphrased by the Regional Director) "[t]he Agency has a general policy of holding in abeyance the processing of a petition where a concurrent unfair labor practice charge is filed by a party to the petition and the charge alleges conduct that, if proven, would interfere with employee free choice in an election,

were one to be conducted," NLRB Casehandling Manual (Part Two) § 11730, the Regional Director neglects to note that the Manual goes on to state that, "[w]here the Regional Director is giving consideration to these exceptions [to the blocking charge policy] while implementing the blocking charge policy, it should be recognized that **the policy is not intended to be misused by a party as a tactic to delay the resolution of a question concerning representation raised by a petition."** NLRB Casehandling Manual (Part Two) § 11730 (emphasis added). It is apparent from the Report on Objections, and from the decision to delay the election, that the Regional Director did not give full or meaningful consideration to whether the Union filed the unfair labor practice charge simply as a tactic to delay the election. Indeed, the Report makes no mention whatsoever of the evidence submitted by Warren Unilube that demonstrated that the Union did, in fact, file the unfair labor practice charge solely for the purpose of delaying the election.[4]

In addition, it is apparent that the Regional Director did not meaningfully consider applicable exceptions to the blocking charge policy. As an initial matter, there are in fact, five exceptions to the blocking charge policy (rather than four, as stated by the Regional Director in the Report).[5] NLRB Casehandling Manual (Part Two) §§11731.1-11731.5. The only exception that the Regional Director deemed applicable to the instant case is the exception "[w]here the charge is filed too late to permit investigation before the hearing or election." (Report at 7.) Again, the exception as quoted by the Regional Director in the Report is not contained anywhere in the Manual.

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[4] This evidence is summarized in § A.1, *supra.*

[5] There are actually six exceptions to the blocking charge policy listed in Part One of the NLRB Casehandling Manual, the additional exception being "Charges Otherwise Appropriate for Deferral Under *Collyer* or *Dubo*." NLRB Casehandling Manual (Part One) § 11731.3.

Presumably the Regional Director is referring to the exception found in §11731.5 – Exception 5: Scheduled Election.[6] If so, however, it is evident that the Regional Director failed to properly apply the current provision of the Manual. The full text of § 11731.5 reads as follows:

> **11731.5 Exception 5: Scheduled Election**
>
> When an election has already been scheduled and thereafter a Type I or Type II unfair labor practice charge is filed too late to permit adequate investigation before the scheduled election, the Regional Director may, in his/her discretion:
>
> (a) Postpone the election pending disposition of the charge; or
>
> (b) Hold the election as scheduled and impound the ballots until after disposition of the charge; or
>
> (c) Conduct the election, issue the tally of ballots and, in the absence of objections, issue a certification; and then proceed to investigate the charge.
>
> **Factors:** The following are among the factors to be considered under this exception:
>
> (1) **The extent to which substantial evidence in support of the allegations is submitted by the charging party with its charge**
>
> (2) The passage of time between the alleged conduct and the filing date of the charge
>
> (3) The seriousness of the allegations **and the evidence submitted with the charge as to its dissemination.**
>
> Relevant factors recited in Exception 2 (Sec. 11730.2) may also be considered.

NLRB Casehandling Manual (Part Two) § 11731.5.

[6] This exception is Exception 6 in Part One of the Manual. NLRB Casehandling Manual (Part One) § 11731.6. The language of the exception is identical in Part One and Part Two.

Here, it is evident that the Regional Director did not properly apply the factors set forth in § 11731.5. Indeed, given that the Report does not even reference the factors to be considered (and, in fact, does not cite the correct language from the current Casehandling Manual), it appears that the Regional Director simply did not given any consideration to them whatsoever. Consideration of the first factor alone – "the extent to which substantial evidence in support of the allegations is submitted by the charging party with its charge" – would result in the conclusion that the election should have proceeded notwithstanding the Union's filing of its baseless charge.

The charge itself is a bare-bones, vague and general charge. (See A-7.) The Union did not provide in the charge, and could not have provided, **any** evidence (much less substantial evidence) that Warren Unilube was in any way responsible for the Editorial, or that the Editorial was attributable to Warren Unilube. (See A-7.) Further, given that Warren Unilube immediately circulated the Memorandum, disavowing the statements made in the Editorial, (see A-79), there could be no substantial evidence that the statements in the Editorial could be attributed to Warren Unilube. Absent such evidence, there can be no merit to the charge against Warren Unilube.[7] Indeed, the Report does not reference a single piece of evidence submitted by the Union in support of its charge that would constitute "substantial evidence" and might justify delaying the election. The Regional Director instead apparently concluded that, because the "statements in

[7] See, e.g., Star Kist Samoa, Inc., 237 NLRB 238, 246 (1978) (finding that an employer could be liable for the actions of an anti-union group during an election campaign only if those actions are attributable to the employer and the employer did not sufficiently disavow those actions); Richlands Textile, Inc., 220 NLRB 615, 618 (1975) (finding an employer was liable for the actions of a member of the state House of Representatives only if the member was the agent of the employer or the employer did not disavow the member's actions and thus acquiesced and ratified those actions by silence).

the Editorial amounted to a threat of plant closure," that mere allegation alone justified delaying the election. (See Report at 7.)

Further supporting the conclusion that the Union could not have submitted "substantial evidence" supporting its charge is the fact that Regional Director ultimately dismissed the Union's unfair labor practice charge regarding the Editorial "because there is insufficient evidence to establish a violation of the Act."[8] (A-8 to A-10.) Certainly, if there was not enough evidence to demonstrate a violation of the Act following the Regional Director's thorough investigation of the matter, there could not have been "substantial evidence" of a violation based only on the Union's bare-bones unfair labor practice charge. As such, the Regional Director should have allowed the election to proceed notwithstanding the unfair labor practice charge.

Indeed, even if there was some question in the Regional Director's mind as to the possible merits of the charge (despite the utter and complete lack of **any** evidence to support the charge), the Regional Director could have simply allowed the election to proceed and then impounded the ballots until after the charge was fully investigated. NLRB Casehandling Manual (Part Two) § 11731.5. By refusing to do so, and instead delaying the election, the Regional Director improperly gave the impression to the employees that there was merit to the unfair labor practice charge and that Warren Unilube had engaged in the conduct alleged therein. The Regional Director improperly delayed the election to the detriment of the voting employees and Warren Unilube, resulting in a delayed election that interfered with the employees' freedom of choice.

Based on the Regional Director's failure to follow and apply the Board's current blocking charge policy as set forth above, and based on its resulting conduct which gave employees the erroneous impression that Warren Unilube had violated the Act, thus interfering with the

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[8] In the Report, the Regional Director incorrectly states that "the charge was ultimately withdrawn by the Union." (Report at 7.)

employees' freedom of choice, Warren Unilube respectfully requests that the Board refuse to follow the Regional Director's recommendation in his Report, sustain Warren Unilube's objection, and direct a rerun election.

CONCLUSION

For the reasons set forth above, Warren Unilube respectfully requests that the Board refuse to follow the recommendation of the Regional Director in his Report. Warren Unilube further requests that the Board sustain Warren Unilube's objection, set aside the election results, and direct a rerun election. In the alternative, at a minimum, Warren Unilube requests that the Board determine that substantial and material factual issues exist and direct that a hearing be held before a hearing officer in accordance with Section 102.69(f) of the NLRB Rules and Regulations.

Respectfully submitted this 21st day of January, 2011.

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CERTIFICATE OF SERVICE

The undersigned certifies that she served a true and accurate copy of the foregoing upon the following by the method indicated:

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This the 21st day of January, 2011.

Jennifer M. Miller